

RECORDATION NO. 6424 - B  
DEC 14 1971 - 10 35 AM  
INTERSTATE COMMERCE COMMISSION

**AGREEMENT AND ASSIGNMENT** dated as of November 15, 1971, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Manufacturer), and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY (hereinafter called the Assignee).

WHEREAS, the Manufacturer and SECURITY PACIFIC NATIONAL BANK (hereinafter called the Company), have entered into a Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred

by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 13 and 14 of the Conditional Sale Agreement or Annex A thereto or relieve the Company from its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 9 and 13 of, and Annex A to, the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and

only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, how-*

*ever*, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and

giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, BOSTON, MASSACHUSETTS—SECURITY OWNER."

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all

instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its counsel (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee (hereinafter called the Bill of Sale), confirming the transfer hereunder to the Assignee of security title to the units of Equipment in the Group and warranting to the Assignee and to the Company that, at the time of delivery to the Company under the Conditional Sale Agreement, the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated

by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Lessee stating that prior to delivery and acceptance of units of the Equipment in the Group under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee;

(d) Invoices for the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Lessee as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated as of such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms, (ii) this Assignment, the Lease and the Lease Assignment have been duly authorized, executed and delivered by the respective parties thereto and are legal and valid instruments binding upon the parties thereto, (iii) this Assignment, in conjunction with the confirming Bill of Sale, is effective to assign and transfer to the Assignee all the rights, titles, interests, powers, privileges and remedies purported to be assigned and transferred to the Assignee by the Manufacturer, (iv) the Equipment in the Group, at the time of delivery thereof to the Company under the Conditional Sale Agreement, was

free of all claims, liens, security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, this Assignment, the Lease or the Lease Assignment, or, if any approval is necessary, it has been obtained, (vi) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee in any state of the United States of America or the District of Columbia and (vii) registration of the Conditional Sale Agreement or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated as of such Closing Date of Messrs. Sheppard, Mullin, Richter & Hampton, counsel for the Company, addressed to the Assignee, to the effect set forth in § 14 of the Lease and to the effect that assuming due authorization, execution and delivery of this Assignment by the parties hereto, this Assignment is a valid and binding instrument enforceable in accordance with its terms and requires no governmental approval;

(g) Opinion dated as of such Closing Date of counsel for the Lessee addressed to the Assignee and to the Company, to the effect set forth in clause (iv) of sub-



paragraph (e) above and stating that (i) the Lessee is a duly organized and existing corporation in good standing under the laws of Michigan and has the power and authority to own its property and carry on its business as now conducted, (ii) the Lease has been duly authorized, executed and delivered by the Lessee and is binding upon the Lessee, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Lease by the Lessee or the consummation of the transactions therein contemplated, or, if any approval is necessary it has been obtained and (iv) upon the due filing and recordation of the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights of the Assignee hereunder or of the Company and the Assignee under the Lease in any state of the United States of America or the District of Columbia;

(h) Opinion dated as of such Closing Date of Messrs. McCarthy & McCarthy, who are acting as special Canadian counsel for the Assignee, addressed to the Assignee and the Lessee, stating that (i) the Conditional Sale Agreement and this Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and counterparts of such documents have been duly filed in the office of the Minister of Financial and Commercial Affairs of Ontario, and no further act, filing, recording

or deposit (or giving of notice) is required in order fully to protect the rights hereunder of the Assignee in the Conditional Sale Agreement and the Equipment in the Group in the Province of Ontario, Canada against any and all subsequent purchasers or mortgagees and/or from creditors of the Company and the Lessee, (ii) the Lease and the Lease Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and no other act, filing, recording or deposit (or giving of notice) in respect of the Lease is necessary in order to protect the interests thereunder of the Company and the Assignee in and to the Equipment in Canada, (iii) the Guarantor referred to in the Lease is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement (as defined in the Lease), (iv) the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms, and (v) no approval is required from any governmental ministry or agency or public regulatory body in Canada with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or if any such approval is required, such approval has been duly obtained;

(i) Opinion dated as of such Closing Date of counsel for the Manufacturer addressed to the Assignee, to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and stating that (i) the Manufacturer

is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the Bill of Sale have been duly authorized, executed and delivered by the Manufacturer and are valid and binding instruments enforceable against the Manufacturer in accordance with their terms; and

(j) Unless payment of the amount, if any, payable under Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (e) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States on the opinions of counsel for

the Company, the Manufacturer or the Lessee as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred under the Conditional Sale Agreement.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment in the Group with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agree-

ment was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company) it is a valid and existing agreement binding upon the Manufacturer and the Company and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of November 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate

names by officers or officials duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Corporation),

[CORPORATE SEAL]

by   
Vice President

Attest:

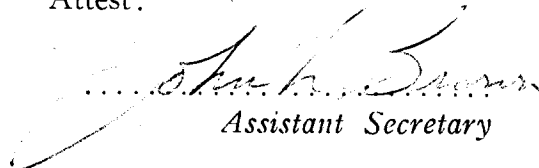
  
Assistant Secretary

JOHN HANCOCK MUTUAL LIFE  
INSURANCE COMPANY,

[CORPORATE SEAL]

by   
Senior Investment Officer

Attest:

  
Assistant Secretary

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this 8 day of December, 1971, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.....  
Notary Public

My Commission expires

Dec 31, 1975

COMMONWEALTH OF MASSACHUSETTS }  
COUNTY OF SUFFOLK } ss.:

On this 20<sup>th</sup> day of December, 1971, before me personally appeared ~~Dana M. Moore~~ to me personally known, who, being by me duly sworn, says that he is a Senior Investment Officer of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.....  
Notary Public

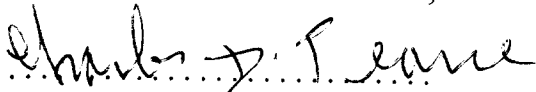
My Commission expires

Dec 30, 1972

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of November 15, 1971.

SECURITY PACIFIC NATIONAL BANK,

by    
Vice President